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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।
Separate paging is given to this Part in order that it may be filed as a separate compilation

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 24th November, 1986:—

BILL No. XLIII OF 1986

A Bill further to amend the Parsi Marriage and Divorce Act, 1936.

BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

Short title, and commencement.

1. (*1*) This Act may be called the Parsi Marriage and Divorce (Amendment) Act, 1986.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

3 of 1936.

Amendment of section 3.

2. In the Parsi Marriage and Divorce Act, 1936 (hereinafter referred to as the principal Act), section 3 shall be re-numbered as sub-section (*1*) thereof, and—

(*a*) in sub-section (*1*) as so re-numbered, for clause (*c*), the following clause shall be substituted, namely:—

"(c) in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.";

113 G of I—1.

(*b*) after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted, namely:—

"(*2*) Notwithstanding that a marriage is invalid under any of the provisions of sub-section (*1*), any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate.".

Amendment of section 6.

3. In section 6 of the principal Act, the words ", or their fathers or guardians when they shall not have completed the age of twenty-one years, shall be omitted.

Amendment of sections 19 and 20.

4. In sections 19 and 20 of the principal Act, for the words "by seven delegates", the following shall be substituted, namely:—

"by five delegates, except in regard to,—

(*a*) interlocutory applications and proceedings;

(*b*) alimony and maintenance, both permanent as well as *pendente lite;*

(*c*) custody, maintenance and education of children; and

(*d*) all matters and proceedings other than the regular hearing of cases.".

Amendment of section 25.

5. In section 25 of the principal Act, after the words "being in force", the words "involving moral turpitude" shall be inserted.

Amendment of section 27.

6. In the proviso to section 27 of the principal Act, for the word "three", the word "two" shall be substituted.

Amendment of section 29.

7. In section 29 of the principal Act, in sub-section (*1*), the words "or where the marriage under this Act was solemnized" shall be added at the end.

Amendment of section 32.

8. In section 32 of the principal Act,—

(*a*) after clause (*b*), the following clause shall be inserted, namely:—

'(*bb*) that the defendant has been incurably of unsound mind for a period of two years or upwards immediately preceding the filing of the suit or has been suffering continuously or intermittently from mental disorder of such kind and to such an extent that the plaintiff cannot reasonably be expected to live with the defendant.

Explanation.—In this clause,—

(*a*) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(*b*) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in

abnormally aggressive or seriously irresponsible conduct on the part of the defendant, and whether or not it requires or is susceptible to medical treatment;';

(*ii*) after clause (*d*), the following clause shall be inserted, namely:—

"(*dd*) that the defendant has since the solemnization of the marriage treated the plaintiff with cruelty or has behaved in such a way as to render it in the judgment of the Court improper to compel the plaintiff to live with the defendant:

Provided that in every suit for divorce on this ground it shall be in the discretion of the Court whether it should grant a decree for divorce or for judicial separation only;";

(*iii*) in clause (*g*), for the words "three years", the words "two years" shall be substituted;

(*iv*) in clause (*h*),—

(*1*) the words "a decree or order for judicial separation has been passed against the defendant, or" shall be omitted;

(*2*) for the words "three years", the words "one year" shall be substituted;

(*v*) clause (*i*) shall be omitted;

(*vi*) in clause (*j*), after the word "Parsi", the words "by conversion to another religion" shall be inserted.

Insertion of new sections 32A and 32B.

9. After section 32 of the principal Act, the following sections shall be inserted, namely:—

Non-resumption of cohabitation or restitution of conjugal rights within one year in pursuance of a decree to be ground for divorce.

"32A. (*1*) Either party to a marriage, whether solemnized before or after the commencement of the Parsi Marriage and Divorce (Amendment) Act, 1986, may sue for divorce also on the ground,—

(*i*) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(*ii*) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

(*2*) No decree for divorce shall be granted under sub-section (*1*) if the plaintiff has failed or neglected to comply with an order for maintenance passed against him under section 40 of this Act or section 488 of the Code of Criminal Procedure, 1898 or section 125 of the Code of Criminal Procedure, 1973.

5 of 1898.
2 of 1974.

Divorce by mutual consent.

32B. (*1*) Subject to the provisions of this Act, a suit for divorce may be filed by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Parsi Marriage and Divorce (Amendment) Act, 1986, on the

ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved:

Provided that no suit under this sub-section shall be filed unless at the date of the filing of the suit one year has lapsed since the date of the marriage.

(2) The Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act and the averments in the plaint are true and that the consent of either party to the suit was not obtained by force or fraud, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.".

Amendment of section 34.

10. In section 34 of the principal Act, the portion beginning with the words "or on the ground that", and ending with the words "with the defendant." shall be omitted.

Amendment of section 35.

11. In section 35 of the principal Act, after the figures "32", the figures and letter ", 32A" shall be inserted.

Substitution of new section for section 38.

12. For section 38 of the principal Act, the following section shall be substituted, namely:—

Documentary evidence.

"38. Notwithstanding anything contained in any other law for the time being in force no document shall be inadmissible in evidence in any proceeding at the trial of a suit under this Act on the ground that it is not duly stamped or registered.".

Substitution of new sections for sections 39 and 40.

13. For sections 39 and 40 of the principal Act, the following sections shall be substituted, namely:—

Alimony *pendente lite*.

"39. Where in any suit under this Act, it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the suit, it may, on the application of the wife or the husband, order the defendant to pay to the plaintiff, the expenses of the suit, and such weekly or monthly sum, during the suit, as, having regard to the plaintiff's own income and the income of the defendant, it may seem to the Court to be reasonable.

Permanent alimony and maintenance.

40. (1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on an application made to it for the purpose by either the wife or the husband, order that the defendant shall pay to the plaintiff for her or his maintenance and support, such gross sum or such monthly or periodical sum, for a term not exceeding the life of the plaintiff as having regard to the defendant's own income and other property, if any, the income and other property of the plaintiff, the conduct of the parties and other circumstances of the case, it may seem to the

Court to be just, and any such payment may be secured, if necessary, by a charge on the movable or immovable property of the defendant.

(2) The Court if it is satisfied that there is change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just.

(3) The Court if it is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he had sexual intercourse with any woman outside wedlock, it may, at the instance of the other party, vary, modify or rescind any such order in such manner as the Court may deem just.".

Amendment of section 41.

14. In section 41 of the principal Act,—

(*a*) after the words "approved by the Court", the words "or to a guardian appointed by the Court" shall be inserted;

(*b*) after the words "a new trustee," the words "or guardian," shall be inserted.

Substitution of new section for section 43.

15. For section 43 of the principal Act, the following section shall be substituted, namely:—

Suits to be heard *in camera* and may not be printed or published.

"43. (1) Every suit filed under this Act shall be tried *in camera* and it shall not be lawful for any person to print or publish any matter in relation to any such case except a judgment of the Court printed or published with the previous permission of the Court.

(2) If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.".

Amendment of section 44.

16. In section 44 of the principal Act, for the word "five", the word "three" shall be substituted.

Amendment of section 45.

17. To section 45 of the principal Act, the following provisos shall be added, namely:—

"Provided that the presiding Judge shall read out to the delegates the relevant sections of this Act, and may, if he considers it necessary so to do, explain the same:

Provided further that a *verbatim* record shall be made of what the presiding Judge reads out or explains to the delegates.".

Amendment of section 47.

18. Section 47 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) Every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court.".

Amendment of section 48.

19. In section 48 of the principal Act,—

(*a*) the word "hereby" shall be omitted;

(*b*) the words ", as if the prior marriage had been terminated by death" shall be omitted.

Amendment of section 49.

20. In section 49 of the principal Act, for the words "sixteen years", the words "eighteen years" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The law relating to marriage and divorce among Parsis is contained in the Parsi Marriage and Divorce Act, 1936. The Act had not been amended recently in view of the policy of the Government not to effect any changes in the personal laws of any minority community unless the initiative comes from such community. The Board of Trustees of the Parsi Panchayat, Bombay has sent some recommendations to Government in the form of proposals to amend the Act. The Minorities Commission which has considered these proposals has also recommended the proposed amendments. The amendments are mainly aimed at enlarging the scope of some of the provisions of the Act so as to bring them on the lines of the provisions of the Hindu Marriage Act, 1955.

2. The main amendments proposed are as follows:—

(*1*) To provide that the minimum marriage age in respect of males and females shall be 21 and 18 years, respectively. This is also in accord with the recent amendments made to the Child Marriage Restraint Act, 1929.

(*2*) To provide that divorce can also be obtained on the ground that the defendant had been incurably of unsound mind for a period of two years or upwards immediately preceding the filing of the suit or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the plaintiff cannot reasonably be expected to live with the defendant. Though this ground is available under the present provision, it is proposed to be made more comprehensive and to define "mental disorder" in the Act itself.

(*3*) Insertion of "cruelty" as an additional ground for divorce.

(*4*) Insertion of a new provision to provide for divorce by mutual consent.

(*5*) It is proposed to provide that in any matrimonial proceedings under the Act if the plaintiff has no independent income sufficient for her or his support, then the defendant should pay to the plaintiff, monthly or weekly, during the suit, such expenses and sum as the court considers reasonable.

(*6*) Provision for payment of permanent allmony and maintenance to the plaintiff having regard to the defendant's own income and other property and the income and other property of the plaintiff and the conduct of the parties and other circumstances which the court may take into consideration.

(*7*) To provide that all proceedings in a court under the Act shall be conducted *in camera* and it shall not be lawful for any reason to print or publish any part of such proceedings without the

previous permission of the court. Contravention of these provisions is proposed to be made punishable with fine which may extend to one thousand rupees.

3. The Bill seeks to achieve the above objects.

NEW DELHI; A. K. SEN.

The 14th November, 1986.

SUDARSHAN AGARWAL,
Secretary-General.

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